



# BOARD OF INQUIRY (*Human Rights Code*)

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IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint by Dena Potocnik dated October 25, 1988, alleging discrimination on the basis of sex by City of Thunder Bay.

**B E T W E E N :**

Ontario Human Rights Commission

**- and -**

Dena Potocnik

**Complainant**

**- and -**

City of Thunder Bay

**Respondent**

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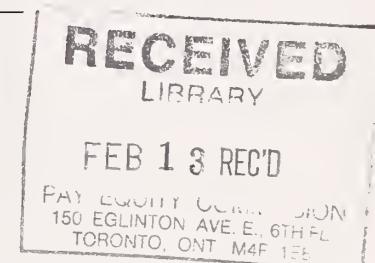
## DECISION ON QUANTUM OF COSTS

**Adjudicator :** Lorne Slotnick

**Date :** February 9, 1998

**Board File No:** BI-0034-95

**Decision No :** 98-001-C





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## A P P E A R A N C E S

Ontario Human Rights Commission	)	Kikee Malik, Counsel
	)	
	)	
The Corporation of the City of Thunder Bay, Respondent	)	Allan D. McKittrick, Counsel
	)	
	)	

1. In Decision No. 97-018-C, dated September 10, 1997, I ordered the Commission to pay the City of Thunder Bay's counsel fees for 20 hearing days, on a party and party basis. I further ordered the amount reduced by 30% to take into account the City's conduct in contributing to its own undue hardship. The parties have been unable to agree on the amount to be paid, and have provided me with written submissions on this issue.
2. The City has asked that costs be fixed at \$67,000. This represents the pro-rated amount billed for 14 hearing days (20 hearing days minus 30%) including preparation work and legal research. It also includes the presence of a legal assistant throughout the hearing days, billed at \$50 an hour, for an approximate total of \$7,500. The City's position is that the order for costs should also include motions related to the 20 hearing days. Consequently, the City has, in addition to its billing for 14 days, included the following: three days during which I heard the City's motion to dismiss the complaint for lack of evidence; two days during which I heard the motion for costs; and four conference calls during the hearing dealing with various procedural issues. Also added were the GST and \$2,500 to prepare the City's submissions on the quantum of costs. The City has then taken the figure and reduced it by 30% in recognition of the fact that party and party costs are not meant to provide full indemnity. (There seems to be agreement on the 30% figure with respect to this latter point.) Rounded down, the final figure is \$67,000.
3. The City has also requested interest from August 30, 1996, which is the date of the decision dismissing the bulk of the complaint on the grounds that a *prima facie* case had not been made out. (The remainder of the complaint, relating to direct discrimination in the awarding of the Deputy Treasurer job, was dismissed on February 7, 1997.) This would bring the total claimed to somewhere in the neighbourhood of \$73,000.

4. The Commission asks that costs be fixed at \$18,350.50, including GST. This is based on its view that "counsel fees" includes time in attendance at the hearing, and not preparation time. The Commission's calculation does not include payment for the time of the legal assistant, or the hearing days and conference calls arising from the 20 hearing days.

5. My decision of September 10, 1997, uses the term "counsel fees." The phrase was not meant as a term of art, distinguishable – as in Tariff A of the Rules of Civil Procedure – from preparation time. I intended that the City be indemnified for preparation time. Given the complex nature of the hearing, including the large number of documents put into evidence by the Commission, a cost order restricted to actual hearing time would be an unfairly low level of indemnification.

6. However, I do not think the Commission should be required to pay for the presence of a legal assistant at the hearing. In addition, my conclusion that the hearing was prolonged by 20 days due to the Commission's actions, while admittedly a rough estimate, was meant to include the three days during which I heard the motion to dismiss. Furthermore, given that I believe the Commission acted quite properly in defending the motion for costs and in disputing the City's position on quantum of costs, it is not appropriate in this situation to award costs for the time spent arguing about costs.

7. I have doubts about my jurisdiction to award interest on a cost award, and in any event I would not have interest run from August, 1996, a date that is before the complaint in its entirety was dismissed, and more than a year before the decision on costs was released.

8. Counsel for the City provided me with copies of his bills. It appears that for the period covering 25 hearing days (not including two days spent on preliminary issues, three days on evidence relating to direct discrimination in the awarding of the Deputy Treasurer's

job, and two days covering the motion for costs), counsel billed the City \$128,125 plus GST. These bills, as the City acknowledges in its submissions, contain items not intended to be covered by my cost order, including, for example, time spent assembling the documents for disclosure to the Commission. Consequently, I am reducing the \$128,125 figure by 5% in the calculations below.

9. I fix the costs as follows:

Amount billed to City for 25 hearing days = \$128,125.

1. Reduce by 5% to eliminate items not intended to be covered = \$121,718.75
2. Reduce by \$7,500 to eliminate billings for attendance of legal assistant = \$114,218.75.
3. Pro-rate for amount billed for 20 hearing days ( $20/25 \times \$120,625$ ) = \$91,375.
4. Reduce by 30% in recognition of party and party costs = \$63,962.50.
5. Reduce by further 30% as per decision of Sept. 10, 1997 = \$44,773.75.
6. Add GST of 7% = \$47,907.91.

10. I therefore order the Ontario Human Rights Commission to pay forthwith to the City of Thunder Bay the amount of \$47,907.91.

Dated at Toronto this 9th day of February, 1998.



Lorne Slotnick, Adjudicator